KESATUAN PEKERJA-PEKERJA PERUSAHAAN LOGAM & ANOR.

v.

THE HONOURABLE MINISTER OF LABOUR, MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING MOTION NO. R8-25-10-90]
5 SEPTEMBER 1991

ADMINISTRATIVE LAW: *Certiorari - Dismissal - Decision not to refer dispute to Industrial Court - Weight not given to relevant facts - Application by union to quash decision - Whether Minister acted unreasonably - Industrial Relations Act 1967, s. 26(2).*

The 2nd applicant (R) was employed on 2 February 1981 as a senior store hand by the company C. The company dismissed R from his job by letter dated 29 July 1988, the dismissal taking effect on 30 July 1988. The 1st applicant, the union on 19 September 1988 made a representation to the Director General of Industrial Relations, (DGIR) that a dispute existed between the union and the company over the dismissal of R. On 23 October 1989 the DGIR submitted his report to the Minister to say that there was no likelihood of a settlement of the dispute.

On 11 December 1989, the Secretary General of the Ministry informed the union and the company that the Minister had decided under s. 26(2) of Industrial Relation Act 1967, not to refer the dispute to the Industrial Court.

This was the union's application for an order of *certiorari* to quash the Minister's decision.

Held:

[1] The Minister had acted on the DGIR's report submitted to him and was only concerned with the fact of a false entry having been made in the company's stock book. He had not given consideration, or if he had, he had not given much weight to other relevant facts which led to the making of the false entry and the subsequent recovery of the clamp-springs which the company thought were missing from their store.

[2] Had the Minister considered and given weight to the matters he might have come to a different conclusion, and should have certainly referred the dispute to the Industrial Court to determine whether under the circumstances R had been dismissed with just cause or excuse.

[R's application allowed with costs.]

Case referred to:
Associated Provincial Picture Houses Ltd. v. Wednesbury Corp. [1948] 1 KB 223 ***(foll)***

Legislation referred to:
Industrial Relations Act 1967, s. 26(2)

For the applicants - V.K. Lingam; M/s. V.K. Lingam & Co.
For the respondent - Andri Aidham Badri, Federal Counsel

[**Editors Note:** The appellants have appealed to Supreme Court *vide* MARS No. 01-20-1991]

JUDGMENT

Eusoff Chin J:

The 2nd applicant was employed on 2 February 1981 as a workman (senior store hand) by S M Amalgamated Steel Mills Berhad (the company). By letter dated 29 July 1988, the company dismissed the 2nd applicant from his job, the dismissal taking effect the next day on 30 July 1988. After unsuccessfully appealing to the company, the 1st applicant (union) on 19 August 1988 made a representation to the Director General of Industrial Relations (DGIR) that a dispute existed between the union and the company over the dismissal of the 2nd applicant. The DGIR called for a conciliatory meeting which both the union and the company attended on 11 October 1988. The dispute was not settled. Since nothing was heard from the Minister of Labour (Minister), the union on 13 April 1989 wrote to the Minister to find out what happened as regards their representation. On 23 October 1989 the DGIR submitted his report to the Minister to say that there was no likelihood of a settlement of the dispute. On 11 December 1989 the Secretary General of the Ministry of Labour informed the union and the company that the Minister had decided under s. 26(2) of the Industrial Relations Act 1967 not to refer the dispute to the Industrial Court. The union received the Minister's decision on 16 December 1989.

On 19 January 1990 the union made an application to the High Court for an order of *certiorari* to quash the Minister's decision made on 11 December 1989.

Events which led to the dismissal of the 2nd applicant (Ramli) were these: The company had discovered that 56 clamp spring were missing from its store. Ramli checked the company stock card and found the 56 clamp springs were entered by another employee Lee Len Huat, as valued at RM1 per piece. Ramli and his colleagues searched the store for the springs. They were looking for tiny pieces of springs as the value quoted was RM1 per piece. Since there was no proper system adopted by the company on removal of things from the company store, Ramli assumed that the 56 springs were taken by the mechanical department of the company. So, when he could not locate the springs in the store he made an entry in the company record book on 16 June 1988 that he had issued the 56 springs out of the store. The company decided to take disciplinary action on Ramli, and from the charge Ramli found that the value of the 56 clamp springs was not RM56 but RM20,000. Ramli must have been stunned to discover the value of the 56 springs to be RM20,000. He realised that the springs could not be small or tiny springs because of their high value. He went to the store and searched for bigger springs. He located them in the store. The 56 clamp-springs were never lost or missing from the store. The company was informed of this fact, but nevertheless, proceeded with the disciplinary action, and dismissed Ramli from his job. It would appear that the whole commotion was caused by Lee Len Huat's making an incorrect entry in the company stock book when he described the 56 clamp-springs as having the value of RM56.

The Minister in his affidavit said that he had "considered the matter" after receiving the report from the DGIR, and decided it was not expedient to refer the dispute to the Industrial Court. It also appears from the DGIR's affidavit that the DGIR was only concerned with the admission of Ramli who admitted that he had made an additional entry on 16 June 1988 in the company record that he had issued 56 springs worth RM20,000, and that entry had been done without permission.

I think in this case the Minister who acted on the DGIR's report submitted to him (Minister) on 23 October 1989, was only concerned with the fact of a false entry having been made in the company stock book. He had not given consideration, or if he had, he had not given

much weight to other relevant facts which led to the making of the false entry and the subsequent recovery of the clamp-springs which the company thought were missing from their store. These relevant facts which are redundant and ought to be considered by the Minister are:

(1) that an earlier wrong entry had been made in the company stock book by Lee Len Huat, who described the 56 clamp springs as valued at RM1 a piece, when the total value was in fact RM20,000;

(2) this wrong entry led Ramli and his colleagues to search for tiny springs worth RM1 each in the store of the company, and as a result they could not find the springs;

(3) that Ramli became aware that the springs were not tiny springs only when he was slapped with the disciplinary charge which showed that the 56 springs had a total value of RM20,000;

(4) that on his realising the error, Ramli had made further search of the store and located the 56 clamp-springs;

(5) that the company was informed of the recovery of the 56 'lost' clamp-springs;

(6) that because of this, the company had suffered no loss of RM20,000;

(7) that in spite of the facts, the company proceeded to dismiss Ramli.

In *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223, at 229, Lord Green MR stated that:

> ...a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

And further at p. 230, he said:

> It is true to say that if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the Courts can interfere.

I think that had the Minister considered and given weight to those seven matters I enumerated above, he might have come to a different conclusion, and would certainly have referred the dispute to the Industrial Court to determine whether under the circumstances Ramli had been dismissed with just cause or excuse.

I, therefore, allow with costs this application and direct that an order of *certiorari* be issued to quash the decision of the Minister dated 11 December 1989; and that the representation by the union be referred to the Minister for his further consideration in accordance with law.

Also found at [1991] 3 CLJ 2164